

## **PRA Task Force**

### **Topic: Other Disclaimers — Sender ID and Advertisement Disclosure**

#### **Task Force Members: John Marelius and Hyla Wagner**

Two groups are considering slate mailer disclaimers and disclaimers on robocalls. The other disclaimers in the PRA are sender identification and advertisement disclosure. **Sender ID** requires a candidate or committee to place its name and return address on all mass mailings. **Advertisement Disclosure** requires ballot measure ads and independent expenditure ads on candidates to state the responsible committee's name, summarizing the economic or other special interest of its top donors, and to list its top two donors of \$50,000 or more.

#### **Aims:**

1. PRA disclaimers should help voters identify the true source of any political communication they receive, in whatever form, with as much specificity as possible.
2. Disclaimer rules should reflect the First Amendment and practical limitations on the amount of space disclaimers can take up on political committee ads.
3. Where new media enables political committees to provide funding disclosure in a disclaimer with a click or a touch on an ad, or a hyperlink, disclaimer rules should use these features.

#### **Recommendations:**

1. **"Paid for by."** All disclaimers should include the words "paid for by" prominently displayed, to make clear who paid for the communication. Sender ID and advertisement disclosure do not currently require this.

Illustrating why this is needed, two mailers this campaign season were sent out in the form of slate mailers, but apparently they weren't. They highlighted the California Professional Firefighters and National Organization for Women, supporting three statewide down-ballot candidates. The way the mailers were formatted, with the official logos of the endorsing organizations highlighted on both sides, would lead any reasonable voter to conclude that the organizations paid for the mailers. But in the upper left-hand corner – in little tiny type – are the names and addresses of the three candidates' campaigns. Presumably the three candidate's campaigns pooled their resources and sent the mailer – a common practice for

under-funded down-ticket campaigns. But the mailers don't expressly say that. This is hardly egregiously deceptive, but the true source of the mailers is not readily apparent.

**2. Plug holes in PRA disclaimer provisions.** Currently no ID or disclaimer is required by the PRA on these items paid for by a candidate's committee in support of his or her own campaign:

- Lawn signs;
- billboards;
- campaign literature that is distributed by some means other than mail, such as handouts at fundraisers or shopping malls, or door hangers;
- radio or television advertisements (these are regulated by the Federal Communications Commission); or
- Emails, website pages, or faxes.

Require "Paid for by" disclaimers on these items.

**3. Adopt FEC standards for authorized and non-authorized (i.e., independent) communication disclaimers.** The FEC rules in this area are quite straightforward. The federal rules require "paid for by" disclaimers on all of a political committee's public communications (including broadcast, cable or satellite transmission, newspaper, magazine, billboards, mass mailings, telephone banks, advertisements placed for a fee on another person's website, and any other public political advertising), as well as on bulk electronic email and websites of the committee. The disclaimers state:

"Paid for by the Sheridan for Congress Committee" on communications paid for by the campaign committee.

"Paid for by XYZ Committee and authorized by Sheridan for Congress Committee" on communications authorized by the candidate but paid for by another committee.

"Paid for by the QRS Committee ([www.QRScommittee.org](http://www.QRScommittee.org)) and not authorized by any candidate or candidate's committee" on messages not authorized by a candidate.

**4. Who is sending this mailer? Ballot measure and independent expenditure committees with uninformative names.** Certain committee names, such as that of a longstanding organization, convey clearly to the voter who the sender is. But other ballot propositions and independent expenditure campaigns have intentionally uninformative names.

For example, mailers from "Stop Hidden Taxes" which is No on 25/Yes on 26, have a disclaimer that identifies "Stop Hidden Taxes" as having "major funding from the CA Business PAC sponsored by the CA Chamber of Commerce and Small Business Action Committee PAC." This is clear. Most voters understand what the Chamber of Commerce is and what the Small Business PAC is and what their agenda is. Another mailer for Yes on 22 that says "major funding from League of California Cities and the California Alliance for Jobs Rebuild California Committee." Most voters can figure out what the League of Cities is and what they want, but what is this other entity?

The advertisement disclosure rules give rise to committee names such as:

Taxpayers for Responsible Government, A Coalition of Professional Engineers, Firefighters, Police and School and State Employees

Alliance for California's Tomorrow, A California Business and Labor Coalition

Californians for a Better Government, A Coalition of Firefighters, Deputy Sheriffs, Teachers, Home Builders and Developers

Yes on 23, California Jobs Initiative, A Coalition of Taxpayers, Employers, Food Producers, Energy, Transportation and Forestry Companies

No on 23, Californians to Stop the Dirty Energy Proposition. Sponsored by Environmental Organizations and Business for Clean Energy and Jobs.

The names of some of these committees are not particularly helpful in identifying them.

The FPPC's June 30 press release documents that six of the top ten independent expenditure committees have names that provide no clue as to who they actually are. Moreover, in what may be an attempt to circumvent the top-two disclosure requirement, these committees pass money back and forth amongst themselves. Recognizing that there are First Amendment issues as to how much space disclosure requirements can take up, we should make it as clear as possible where the money is actually coming from.

What steps, if any, should we take to make the funding of ballot measure and independent expenditure committees, or all non-candidate committees, clearer to voters?

#### **Alternatives:**

**4 A. Maintain the current advertisement disclosure rules and add the committee's FPPC # and a reference to committee' electronic disclosure at the SOS, or if not available, the committee's phone number, for voters to get further information on funding. Adding the**

committee's ID number and a reference to the committee's page on the SOS/Cal-Access or a local ethics agency's website (or a telephone number if the committee is not a state or local electronic filer), would allow voters who want to obtain more information on a committee's funding to do so. This alternative posits that the current advertisement disclosure rules are fairly good and may be the best we can do to provide the voters information on who is funding ballot measure and independent expenditure committees. We could also expand the listing of \$50,000 or more donors from two to three to provide voters committee funding information, as discussed below.

Disclaimers for ballot measure and independent expenditures on candidates would read:

Yes on 45, Californians to for Clean and Renewable Energy. Major funding by: ABC Corp., QRS Org. and XYZ Tech Co. (FPPC# 1234567, Committee information at: <http://cal-access.sos.ca.gov/Campaign/Committees/>.)

**4 B. Maintain advertisement disclosure rules and require listing of more donors than the top two.** We could consider the Washington state standard that requires the top five donors to be listed, rather than the top two. Or we could require the top three donors to be listed.

Ideally, we could take it a step further and require that the top five donors' top donors be listed if their name doesn't make it readily apparent who they are – and those donors' top donors for as long as it takes to get to the true source of the money. This could get unwieldy, however, it would be nice if there were some way to require more donors or information to be listed in the disclaimer if it is not readily apparent who the committee is.

**4 C. Disclaimers on Communications by Non-Candidate Committees (Eliminate the long ad disclosure committee name rules, but keep listing of top donors).** Change the current advertisement disclosure rules. Eliminate the requirement for the long committee name which often does not provide useful information. In addition to the federal "paid for by" disclaimer described above, for non-candidate committees, keep disclosure of top two (or three) \$50,000 donors. Disclosure of \$50,000 donors would be required on ballot measure ads, ads for candidates paid for by independent expenditures, and other ads sent by non-candidate committees. But not on ads sent by candidates or political parties. The disclaimer would look like:

"Paid for by the QRS Committee ([www.QRScommittee.org](http://www.QRScommittee.org)) and not authorized by any candidate or candidate's committee. Top two contributors: . . . . "<sup>1</sup>

Note that the current advertisement disclosure rules only apply to primarily formed ballot measure committees and broadcast or mass mailed independent expenditure ads on candidates. This narrow application contributes complexity to the disclaimer rules. Alternatives 4C and 4D have the advantage of applying a shorter disclaimer to all non-candidate committees, eliminating this issue.

**4 D. Disclaimers on Communications by Non-Candidate Committees (Disclaimer states where committee information can be found. Eliminates ad disclosure committee name rules and top donor disclosure).**

On communications by non-candidate committees, require the disclaimer to say:

"Paid for by QRS Committee FPPC #1234567. Committee information at [committee's web address, or, if no web address, the committee's telephone number]."

Require the committee to provide in a prominent place on its website (or if no website on its phone voice mail message or at an extension) the information we think is pertinent to let people know who the committee really is. This alternative accepts that the overwhelming number of non-candidate committees cannot realistically (or maybe constitutionally) provide enough information on the face of the ad/communication to accurately tell the public who they are, but allows those who are interested in finding out, a relatively easy way to do so.

*Note: The authors support alternative 4 A above, but present the other alternatives for the Task Force's consideration.*

**5. Consolidate Disclaimer Provisions of the PRA in One Chapter.** Currently the Ad disclosure provisions are located in Chapter 4 - Campaign Disclosure, Article 5. The other disclaimer provisions (sender identification, slate mailer disclaimers, robocall disclaimers) could be moved there. Grouping the disclaimers required for various committee communications together in one chapter and article of the Act would make it easier for committees and practitioners to know what disclaimers are required.

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<sup>1</sup> In electronic communications, a hyperlink could replace on-message listing of top contributors. Listing of the committee's top two contributors would not be required in media where the committee can hyperlink to the Secretary of State's website or a local ethics agency's view of the committee's top donors. The disclaimer could read: "Paid for by the QRS Committee ([www.QRScommittee.org](http://www.QRScommittee.org)) and not authorized by any candidate or candidate's committee. Top contributors to the committee are listed [here](#)."

**6. Language of Disclaimer.** Enforcement recommends that the PRA or regulations specify that the disclaimer must be in the same language as the rest of the advertisement.